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Paper No. 6

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**SEP 3 0 2003**

**OFFICE OF PETITIONS**

In re Application of  
Marco Di Benedetto et al.  
Application No. 10/026,311  
Filed: December 21, 2001  
Attorney Docket No. ANDIP006  
Title: METHODS AND APPARATUS FOR  
IMPLEMENTING A HIGH AVAILABILITY  
FIBRE CHANNEL SWITCH

DECISION ON PETITION

This is a decision on the petition filed on August 22, 2003, pursuant to 37 C.F.R. §1.137(f), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

- (1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication<sup>1</sup>;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
- (3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

On December 23, 2002, a Notice of Rescission of Nonpublication Request was filed with the Office. Unfortunately, notification of the filing of the foreign or international application did not accompany this filing.

<sup>1</sup> See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at <http://www.uspto.gov/web/forms/index.html>.

On August 22, 2003, the instant petition was filed with the Office. Unfortunately, notification of the filing of the foreign or international application did not accompany this filing either.

As such, petitioner has not met the first requirement above.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign country or under a multinational agreement.

On September 29, 2003, the undersigned contacted the petitioner in an attempt to have the notification sent via facsimile transmission, but the petitioner's voice mail indicated that he would be out of town for the week. Obviously, as of the mail date of this decision, the required date has not been supplied.

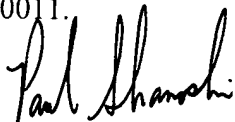
Petitioner is reminded that if an applicant makes a nonpublication request and then rescinds the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country, the application will be treated as if the nonpublication request were never made, and any petition fee would be refunded.

In view of the foregoing, this petition is **DISMISSED**. Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(f)." Petitioner must submit the date which the foreign or international application was filed.

The reply to this letter may be submitted by mail<sup>2</sup>, hand-delivery<sup>3</sup>, or facsimile<sup>4</sup>.

**The application file will be retained in the Office of Petitions for two (2) months.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.



Paul Shanowski  
Attorney  
Office of Petitions  
United States Patent and Trademark Office

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<sup>2</sup> Mail Stop Petitions, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

<sup>3</sup> Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.

<sup>4</sup> (703) 308-6916, Attn: Office of Petitions.